# MEDIA LAW

**Roy S. Gutterman**[†]

INTRODUCTION .......... 1009
I. FIRST AMENDMENT AND PRIOR RESTRAINTS .......... 1010
II. DEFAMATION .......... 1011
  A. *Elements* .......... 1011
  B. *Defenses* .......... 1013
  C. *Of and Concerning* .......... 1014
  D. *Actual Malice* .......... 1014
  E. *Public Figure/Private Figure* .......... 1018
  F. *Opinion* .......... 1020
  G. *Fair & Accurate Reports Under New York Civil Rights Law § 74* .......... 1022
  H. *Anti-SLAPP* .......... 1024
III. INVASION OF PRIVACY .......... 1027
  A. *NY Civil Rights Law §§ 50–51* .......... 1027
  B. *Use of Images* .......... 1028
IV. MISCELLANEOUS TORTS .......... 1029
V. NEWSGATHERING .......... 1030
  A. *Subpoenas* .......... 1030
  B. *FOIL/50-a* .......... 1031

## INTRODUCTION

This year's *Survey* covers a diverse swath of cases involving the media in the areas of tort liability, free flow of information, and the First Amendment. Cases involve high-profile litigants, including celebrities, political figures, and businesspeople, as well as some of the country's biggest news and media outlets. Some cases in state and

[†] Roy S. Gutterman is a professor and director of the Tully Center for Free Speech at the Newhouse School at Syracuse University. He is also on faculty, by courtesy appointment, at the Syracuse University College of Law.

federal courts generated international headlines, along with lengthy reported opinions.

As one court pointed out, as the "'national center of the publishing industry, [New York] has a significant interest in assuring that the risks and liabilities flowing from publishing . . . will be uniform,' ensuring that publishers can 'mold their conduct' to predictable legal norms."[1] Many of the cases addressed in this article follow this doctrine.

## I. First Amendment and Prior Restraints

In *Doyle v. James*, the Second Circuit held that a letter by the Attorney General objecting to a conservative speaker's upcoming speech might be protected under the state's absolute privilege.[2]

The plaintiffs, a pastor, a podcaster, and a businessman, sued the Attorney General after receiving a letter from her urging restraint on a public event that she believed would include racist speech and inspire racially-motivated violence and harassment.[3] The plaintiffs argued that the letter violated state substantive law on defamation per se, federal protections against an unconstitutional prior restraint, and threatened to impede their First Amendment rights.[4]

James argued that she had qualified immunity from liability, but the Second Circuit remanded the case because the United States Supreme Court ruled on a related matter while this case was pending.[5]

On remand for the defamation per se issue, the court remanded with the suggestion that, if the district court retains supplemental jurisdiction, James might be able to invoke an absolute privilege that could be afforded because the letter at issue could be considered part of a government investigation.[6]

1. Lively v. Wayfarer Studios LLC, 786 F. Supp. 3d 695, 737 (S.D.N.Y. 2025) (quoting Jacob v. Lorenz, 626 F. Supp. 3d 672, 685 (S.D.N.Y. 2022)); *cf.* Best Van Lines, Inc. v. Walker, 490 F.3d 239, 245 (2d Cir. 2007). *Lively* is discussed later in this *Survey*.
2. *See* Doyle v. James, No. 24-1065, 2025 U.S. App. LEXIS 21105, at *3 (2d Cir. Aug. 19, 2025).
3. *See* Doyle v. AG Letitia James, 733 F. Supp. 3d 191, 199–200 (W.D.N.Y. 2024).
4. *See id.* at 202.
5. *See Doyle*, No. 24-1065, 2025 U.S. App. LEXIS 21105 at *2 (discussing Nat'l Rifle Ass'n of Am. v. Vullo, 602 U.S. 175, 197 (2024)).
6. *See id.* at *2–3 (applying Rosenberg v. MetLife, Inc., 866 N.E.2d 439 (N.Y. 2007)).

## II. DEFAMATION

### *A. Elements*

The appellate division affirmed the denial of a motion to dismiss the multi-million-dollar defamation case in *Smartmatic USA Corp. v. Fox Corp*.[7] This case focuses on whether the cable news network and its parent company could be liable for defamation and for broadcasting multiple examples of disinformation regarding the 2020 presidential election and the integrity of its voting machines.[8]

This complex case has been litigated for several years and follows a similar case involving Dominion Voting Systems, which brought a similar defamation claim against Fox in Delaware, applying New York substantive law, but settled for $787 million in 2023 on the eve of the trial.[9]

The appellate division wrote:

> The motion court properly denied Fox Corporation's motion to dismiss the defamation claim against it. In the litigation of this issue in the similar matter brought in Delaware by Dominion Voting Systems, the Delaware courts found that allegations nearly identical to those here adequately asserted a claim as to Fox Corporation's direct liability for defamation under New York law that survive a motion to dismiss and a motion for summary judgment.[10]

A state trial court dismissed a defamation case involving a news article about a mother and son seeking a conditional marijuana dispensary license. Finding the article newsworthy and substantially true, the trial court dismissed the defamation and invasion of privacy action in *Mayers v. Racino*.[11]

The story at issue ran under the headline "'It's torture': In wake of NY's marijuana legalization, ex-offenders fight to clear their

---

7. *See* Smartmatic USA Corp. v. Fox Corp., 226 N.Y.S.3d 179, 180 (App. Div. 2025).

8. *See id.* at 181.

9. *See* David Bauder, Randall Chase & Geoff Mulvihill, *Fox, Dominion Reach $787M Settlement over Election Claims*, ASSOCIATED PRESS (Apr. 18, 2023, 8:32 PM ET), https://apnews.com/article/fox-news-dominion-lawsuit-trial-trump-2020-0ac71f75acfacc52ea80b3e747fb0afe (on file with Syracuse Law Review); *see generally* US Dominion, Inc. v. Fox News Network, Inc., 293 A.3d 1002 (Del. Super. Ct. 2023).

10. *Smartmatic*, 226 N.Y.S.3d at 181.

11. *See generally* Mayers v. Racino, No. 000419/2023, 2024 N.Y. Misc. LEXIS 55773 (Sup. Ct. N.Y. Cnty. Oct. 21, 2024).

names" and detailed the plaintiff's efforts to have the son's criminal record expunged to obtain a license.[12] The story also included two photographs of the mother and son, which the plaintiffs argued invaded their privacy under New York Civil Rights Law Sections 50 and 51, and they also argued that the story defamed them.[13]

The court rejected the invasion of privacy claim because a news story, especially one about a major public issue, cannot be considered commercial under the statute.[14]

The court wrote:

> Here, the Plaintiff has failed to allege facts that could support a finding that her image was used for advertising purposes or for the purposes of trade. The Plaintiffs arguments, that this Court broadly construes as criticisms of the journalistic standards employed by Defendants, are insufficient to state a cause of action pursuant to *New York Civil Rights Law §50*. As such, the Plaintiff fails to state a cause of action under *New York Civil Rights Law §§50* and *51*, and that cause of action must be dismissed.[15]

Turning to the defamation claim, the court reiterated the prima facie elements of the tort: 1) a false statement of fact about the plaintiff that causes "public contempt, hatred, ridicule, aversion, or disgrace;" 2) unprivileged publication to a third party; 3) with either negligence (for private figures) or special harm (for a per se claim).[16]

The process and procedures involving marijuana regulation and licensing are matters of public interest, which would require the plaintiff to prove that not only were the prima facie elements met, but also that the publication was done with gross irresponsibility, which is a higher burden.[17] Further, the court found that the five statements the plaintiffs identified in their complaint were substantially true, negating any libelous or defamatory implication.[18]

---

12. *Id.* at *1.
13. *See id.* at *1–2.
14. *See id.* at *4.
15. *Id.*
16. *Mayers*, 2024 N.Y. Misc. LEXIS 55773 at *4–5.
17. *See id.* at *5.
18. *See id.* at *6 ("The first five statements Plaintiff lists in the Complaint are factually true and/or contain opinions summarizing the life of Keston Mayers, who was the focus of the Article. Statement five does state that 'Mayers would be charged with felony possession of marijuana.' In the context of the Article, including statements by Mr. Mayers that, 'I got my damn Mom arrested,' and the Article's history of Mr. Mayers' involvement in the cultivation and sale of cannabis, the description

The court further agreed with the defendant's anti-SLAPP (Strategic Lawsuits Against Public Participation) argument, which further employs the actual malice standard.[19] The court also awarded lawyers' fees under the anti-SLAPP statute.[20]

The court wrote:

> In this matter, the Article was not directed to a limited, private audience. The Article is available to any member of the public willing to search for it *via* the internet. The legalization of cannabis in the State of New York and how New York deals with individuals whose lives have been impacted by cannabis-related convictions prior to legalization is certainly a matter of public concern. As such, the Defendants have demonstrated that the Article involves public participation.[21]

### *B. Defenses*

News coverage of a real estate deal between a university and a local developer was factual and not published with actual malice, the appellate division affirmed in *Swiezy v. Investigative Post, Inc*.[22] A lower court dismissed the defamation and injurious falsehood complaint on summary judgment.[23]

The story at issue described a land transaction between the plaintiff and a group that assists SUNY Buffalo with housing issues as "unsavory" and also described how the plaintiff provided sponsorship to the university's golf team.[24] The plaintiff argued that this created a false impression and harmed his reputation as a businessman and implied that he had bribed government officials.[25] The court pointed out that the word "bribe" was not used in the stories.[26]

But as a public figure involved in a matter of public interest, the trial court correctly determined that he would have to prove with clear

---

of the 'Mayers' being charged cannot reasonably be understood to refer to Plaintiff.").

19. *See id.* at *9–10.
20. *See id.* at *11.
21. *Mayers*, 2024 N.Y. Misc. LEXIS 55773 at *9–10.
22. *See generally* Swiezy v. Investigative Post, Inc., 214 N.Y.S.3d 282 (App. Div. 2024).
23. *See id.* at 285.
24. *See id.* at 285–86.
25. *See id.* at 285.
26. *See id.* at 286.

and convincing evidence that any false statements were published with actual malice—known falsity or reckless disregard for the truth.[27]

This higher burden held for public figures was not proven in this case, the court held.[28] The court held, "Here, we conclude that defendants established, with respect to each of the allegedly defamatory statements, that it was either substantially true or an expression of opinion, and plaintiffs failed to raise a triable issue of fact. We reject the plaintiffs' contention that, even if the statements were not false, they imparted false and defamatory inferences."[29]

The trial court also ruled that the defendants were entitled to lawyers' fees under the anti-SLAPP statute.[30]

### *C. Of and Concerning*

A post on a LinkedIn page was sufficiently about or of and concerning the plaintiff, the appellate division held, while reversing a dismissal of a defamation complaint in *Ruiz v. Laophermsook*.[31]

The court explained:

> The allegedly defamatory statement must be susceptible of a reasonable interpretation by those acquainted with the parties. Here, it is clear that defendant was referring to plaintiff in his LinkedIn post. Among other things, his post, which accused a female "freelancer" of taking credit for work at his company and claiming it as her own, contained enough identifying information, including a link to her website, sufficient to establish as a matter of law that the post was "of and concerning" plaintiff. Moreover, the final line of the post referenced plaintiff by name, and the responses to the post indicated that certain readers recognized that plaintiff was the target of the post.[32]

### *D. Actual Malice*

Actual malice, the legal standard established in the landmark *Times v. Sullivan* case, which requires public officials and public figures to prove that false statements published about them were

27. *See Swiezy*, 214 N.Y.S.3d at 285–86.
28. *See id.* at 286.
29. *Id.*
30. *See id.* at 287.
31. *See* Ruiz v. Laophermsook, 221 N.Y.S.3d 524, 524 (App. Div. 2024).
32. *Id.* at 524–25.

published with actual malice—known falsity or reckless disregard for the truth, weighed heavily in several cases.[33]

Former vice-presidential candidate and Alaska governor Sarah Palin's defamation suit against the New York Times over an error published in an editorial was remanded by the Second Circuit primarily because of errors made by the trial judge in *Palin v. New York Times*.[34]

This case has been percolating through the circuit since 2017[35] and was the subject of a February 2022 trial that found the newspaper not liable for defamation.[36] However, because the judge had issued a dismissal order during jury deliberations and some jurors learned of it, the Second Circuit found the judge had abused his discretion.[37]

Because this case has been covered in four previous *Survey* articles, the summary of the facts will be brief.[38] In 2017, an editorial in the newspaper and online editions mistakenly referred to Palin's political action committee as linked to the mass shooting that nearly killed Rep. Gabby Giffords.[39] The error was noted and corrected.

The Second Circuit found the trial judge's Rule 50(a) dismissal—judgment as a matter of law[40]—along with problems with the jury instructions and evidentiary matters, made after the trial while the jury was in deliberations, was unfair procedurally.[41] At the close of the trial, the newspaper moved for the dismissal, and the trial judge reserved judgment, but later granted the motion while the jury was deliberating.[42] But the judge said he would not grant the motion until the deliberations were completed.[43]

---

33. *See generally* N.Y. Times Co. v. Sullivan, 376 U.S. 254 (1964); Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

34. *See generally* Palin v. N.Y. Times Co., 113 F.4th 245 (2d Cir. 2024).

35. *See* Palin v. N.Y. Times Co., 933 F.3d 160, 164 (2d Cir. 2019).

36. *See* Palin v. N.Y. Times Co., 588 F. Supp. 3d 375, 396 (S.D.N.Y. 2022).

37. *See id.*

38. *See* Roy S. Gutterman, *2022–23 Survey of New York Law: Media Law*, 73 SYRACUSE L. REV. 849, 854 (2023) [hereinafter *2022–23 Survey*]; Roy S. Gutterman, *2021–22 Survey of New York Law: Media Law*, 72 SYRACUSE L. REV. 959, 970 (2022); Roy S. Gutterman, *2020–21 Survey of New York Law: Media Law*, 71 SYRACUSE L. REV. 301, 307–10 (2021) [hereinafter *2020–2021 Survey*]; Roy S. Gutterman, *2018–19 Survey of New York Law: Media Law*, 69 SYRACUSE L. REV. 937, 947–49 (2019).

39. *See Palin*, 113 F.4th at 257–58.

40. *See* FED. R. CIV. P. 50(a).

41. *See Palin*, 113 F.4th at 260.

42. *See id.*

43. *See id.* at 261.

The court held:

> The jury is sacrosanct in our legal system, and we have a duty to protect its constitutional role, both by ensuring that the jury's role is not usurped by judges and by making certain that juries are provided with relevant proffered evidence and properly instructed on the law.[44]

Some jurors were inadvertently informed of the judge's decision during deliberations, which was procedurally unfair to the plaintiff, the court held.[45]

The substantive matter that is based on the evidence at the trial rests on whether the newspaper and its editorial editor published the erroneous information with actual malice under the *New York Times v. Sullivan* case.[46] Though *Sullivan* is considered a bedrock precedent under decades of First Amendment precedent, Palin argued that not only was the actual malice standard inapplicable to her cases, but that the precedent was outdated.[47] The court did not accept her arguments on *Sullivan*'s viability.[48]

The court held that the false statements constituted libel per se, meaning the plaintiff did not need to prove special damages or actual monetary loss.[49] The court explained:

> The challenged statements here are unambiguous and facially defamatory because they claimed there was a "direct" and "clear" link between the crosshairs map and the Loughner shooting. Thus, this is an "ordinary" defamation case in which the intent to defame can be established by showing "that the defendants knew their statement was false," not a case in which the

44. *Id.* at 255.

45. *See id.* at 279–80.

46. *See generally* N.Y. Times Co. v. Sullivan, 376 U.S. 254 (1964).

47. *See Palin*, 113 F.4th at 262.

48. *See id.*

49. *See id*. at 268. ("But here we agree with the district court's conclusion that Palin was not, in fact, obliged to prove special damages because the challenged statements were defamatory *per se*, meaning that they tended 'to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of [her] in the minds of right-thinking persons, and to deprive [her] of their friendly intercourse in society.'" (quoting Rinaldi v. Holt, Rinehart & Winston, Inc., 42 N.Y.2d 369, 379 (1977))).

> challenged statement was susceptible to both "defamatory and nondefamatory meanings."[50]

But the ultimate question, despite exclusion of previous articles and editorials, was whether the Times and its editor, Bennet, either "intended or recklessly disregarded that ordinary readers would understand his words to have the defamatory meaning alleged by Palin."[51] The court explained that Palin's argument straddled the legal standards of defamation and defamation by implication.[52]

Ultimately, there was a second trial in April 2025, which resulted in a jury verdict finding the newspaper did not defame Palin with the requisite level of actual malice.[53]

A newspaper's misidentification of the plaintiff in a photograph published on its website did not rise to the actual malice standard, a trial court held in *Sackler v. ABC*.[54] There were multiple defendants in this case, but this opinion focused on how the New York Post's website used a photograph of the plaintiff, mistakenly identifying him as a different David Sackler, the pharmaceutical executive at the center of the national controversy over the OxyContin drug and its company, Purdue Pharma.[55]

Although the plaintiff's name is the same, he is in fact the owner of a beverage company in New Jersey, and he argued that the misidentification defamed him under both defamation and defamation per se torts.[56] The bulk of the opinion focused on which state's law should apply: New York, because the defendant news organization is based in the state; New Jersey, because that is the place where the plaintiff lives and runs his business; or another jurisdiction because the news article was available online.[57]

The court ultimately ruled that New Jersey law should apply, but the procedural finding was somewhat irrelevant because no matter

---

50. *Id*. at 276–77 (quoting Kendall v. Daily News Publ'g Co., 716 F.3d 82, 90 (3d Cir. 2013)).

51. *Id*. at 276.

52. *See Palin*, 113 F.4th at 262.

53. *See* Katie Robertson & David Enrich, *Palin Loses Libel Retrial Against New York Times*, N.Y. TIMES (Apr. 22, 2025), https://www.nytimes.com/2025/04/22/business/media/sarah-palin-new-york-times-jury-deliberations.html (on file with Syracuse Law Review).

54. *See* Sackler v. ABC, Inc., No. 155513/2019, 2024 N.Y. Misc. LEXIS 5935, at *13 (Sup. Ct. Sept. 4, 2024).

55. *See id.* at *4.

56. *See id.* at *6.

57. *See id.* at *7–9.

what jurisdiction's law applied, the plaintiff could not establish that the misidentifying photograph was published with actual malice.[58]

The court held:

> The Court has determined that New Jersey law applies to this matter under New York's choice of law principles and the plaintiff must show that the defendant acted with actual malice. The Court again finds that the plaintiff failed to allege that the N.Y. Post published the photograph of him with actual malice. The plaintiff's sole allegation is that the Post did insufficient research to determine whether the plaintiff was the David Sackler of Purdue Pharma. As this Court previously determined in the underlying motion to dismiss, such an allegation is insufficient as a matter of law to show that the defendant acted with actual malice.[59]

### *E. Public Figure/Private Figure*

The president of a civic association who also has a prominent security business—which was a springboard for a book and television appearances—was deemed to be a public figure in a defamation case, a Bronx court ruled in *Stanton v. Montee*.[60]

The plaintiff brought an aggressive suit, alleging defamation, tortious interference, and intentional infliction of emotional distress, arguing that the defendants' social media posts were intended to "cancel" him.[61] The court aptly noted that there is no cause of action for being "cancelled."[62]

A series of social media postings, primarily on Twitter, now X, allegedly called the plaintiff homophobic, racist, and xenophobic, among other things.[63] The defendants sought a judicial finding that the plaintiff be declared a public figure, with significant implications for the case, requiring him to prove that the statements were made with actual malice.[64]

Determining whether a plaintiff is a public figure is a matter of law for a judge to decide, though the court here also stated that it is

58. *See id.* at *12–13.

59. *Sackler*, 2024 N.Y. Misc. LEXIS 5935, at *13.

60. *See* Stanton v. Montee, 2024 N.Y. Misc. LEXIS 2393, at *21 (Sup. Ct. Bronx Cnty. June 5, 2024).

61. *See id.* at *2.

62. *See id.*

63. *See id.* at *3.

64. *See id.* at *6.

not a "black and white" issue.[65] There are different categories of public figures depending on the plaintiff's profile: limited purpose, all-purpose, or general.[66]

The Court of Appeals recently explored the public figure issue in a defamation case involving the singer Kesha and her former producer, in *Gottwald v. Sebert*.[67] The plaintiff in this case, Lukasz Gottwald, who is known as "Dr. Luke," sued the singer who had accused him of sexual assault.[68] Gottwald was deemed to be a limited-purpose public figure.[69]

The court wrote, "Certain individuals may be considered public figures for all purposes while others may invite publicity only with respect to a narrow area of interest and may fairly be considered public figures only where the alleged defamation relates to the publicity they sought."[70]

In *Stanton*, the court wrote:

> *Gottwald* is analogous to the case at bar. In *Gottwald*, the plaintiff was a well-known music producer who engaged with the media to project his name and personality and further his business interests. Similarly, here, by his own admission, plaintiff is a television personality who regularly appears on national television programs to promote his business and books. Additionally, at the time this action was commenced, plaintiff was the president of a local community group. Plaintiff may not be a major "celebrity", but by his own admission he regularly appears on national TV to promote his security business and personal brand. Plaintiff also took the step of running for and being elected to a leadership position with a local civic organization. Hence, plaintiff took purposeful steps to thrust himself into the spotlight as a security expert and local politician. Therefore, plaintiff is a limited-purpose public figure. As such plaintiff must prove by clear and convincing

65. *See Stanton*, 2024 N.Y. Misc. LEXIS 2393 at *6.
66. *See id.* at *7.
67. *See* Gottwald v. Sebert, 40 N.Y.3d 240, 251 (2023), *discussed in* Roy S. Gutterman, *2023–24 Survey of New York Media Law*, 74 SYRACUSE L. REV. 779, 789 (2024).
68. *See id.* at 249.
69. *See id.* at 252.
70. *Id.* at 251.

> evidence that defendants' defamatory statements were made with actual malice to recover.[71]

### *F. Opinion*

A pre-action discovery action was properly denied because the plaintiff, a law firm, could not establish that online statements were defamatory because they were opinion, the appellate division ruled in *Matter of Oved & Oved LLP v. Google, LLC*.[72] The plaintiffs sought to identify the person  who posted statements, including that the firm has "a rude attorney."[73]

However, the court held that the statement is "pure opinion" because it "does not have a precise meaning that is capable of being proven true or false, as what is rude to one person may not be perceived as rude to another."[74]

In a federal case, a defamation claim against a financial analyst's report was partially dismissed based on protected opinion doctrine in federal court in *Grifols v. Yu and Gotham City Research*.[75]

Defamation claims surrounding financial analysts and negative reports have been litigated in previous years.[76] One erroneous published statement regarding whether the plaintiff made a $95 million loan to another company was not dismissed and could have been published with actual malice—known falsity or reckless disregard for the truth.[77]

The plaintiff, a Spanish biotech company, argued that multiple statements in the Gotham City Research report presented a negative depiction of the company, even alluding to fraud in its corporate accounting and practices, harming its reputation and driving down its stock price by 43 percent and resulting in a nearly $3 billion loss in market value.[78]

---

71. *Stanton*, 2024 N.Y. Misc. LEXIS 2393 at *7–8.
72. *See generally* Matter of Oved & Oved LLP v. Google, LLC, 219 N.Y.S.3d 42 (App. Div. 2024).
73. *Id*. at 42.
74. *Id.*
75. *See* Grifols v. Yu, No. 24-cv-576 (LJL), 2025 U.S. Dist. LEXIS 101918, at* 70 (S.D.N.Y. May 29, 2025).
76. *See generally* Yangtze River Port & Logistics Ltd. v. Hindenburg Research, No. 150721/2019, 2020 N.Y. Misc. LEXIS 877 (Sup. Ct. N.Y. Cnty. Feb. 25, 2020); *see also 2020–2021 Survey*, *supra* note 38, at 301.
77. *See* Grifols v. Yu, No. 24-cv-576 (LGL), 2025 U.S. Dist. LEXIS 101918, at *60–62 (S.D.N.Y. 2025).
78. *See id.* at *15.

The defendant publishes reports providing stock market advice on short-selling stock. [79] The business also engages in short sales of stocks.[80] The report includes an extensive disclaimer, and other statements explain that its opinions are drawn from and based on publicly available corporate findings and that its reports are purely advisory opinions based on publicly available data.[81]

Critical statements in the report question the plaintiff's business stability, its debt, its financial accounting, and other points important to investors and potential investors.[82] While the court held that most of the published statements were matters of opinion that could not be defamatory, one particular factual point regarding the existence of a $95 million loan was potentially actionable.[83]

The matter of protected opinion is an important point, particularly for financial analysts such as Gotham City Research, which publishes advisory opinions that could influence markets. The court conducted a useful three-prong analysis under Davis v. Boeheim to determine whether the pure opinion privilege protects a statement.[84] To determine whether a statement is opinion, the Court of Appeals guides the court, as a matter of law, to consider: 1) whether the "specific language" has a precise, readily understood meaning; 2) whether the statement or statements are capable of being proven true or false; and 3) within the full context or the broader societal context, whether there are signals to the reader, viewer or listener that the statement is opinion or factual.[85]

The court held:

> The specific statements challenged by Grifols must be considered in the context of the Report that has the purpose of financial commentary and analysis from a party with a disclosed interest, not factual reporting, and that is aimed at conveying this interested party's particular viewpoint or perspective on Grifols based on publicly available financial data. Within this context, only the

79. *See id.* at *6–7.
80. *See id.*
81. *See id.* at *4.
82. *See* Grifols v. Yu, No. 24-cv-576 (LGL), 2025 U.S. Dist. LEXIS 101918, at *7–9 (S.D.N.Y. 2025).
83. *See id.* at *33–35.
84. *See id.* at *29–30 (applying Davis v. Boeheim, 22 N.E.3d 999, 1005 (N.Y. 2014)).
85. *See id.*

> Report statements regarding the Scranton loan would be considered a reasonable matter of fact.[86]

The one factual statement, the court ruled, could be susceptible to a defamatory statement published with actual malice because the report, in its correction the next day, alluded to having known about the potentially erroneous statement regarding the company's loan.[87]

The court wrote:

> Although prompt correction can be evidence that the original error was unknowing, in other circumstances it can support the inference that the defendant knew of its falsehood at the time and was simply trying to create a cover story to protect itself from liability. The facts pleaded by plaintiff here support the latter inference.[88]

The court also rejected a tortious interference claim because it failed to meet the standards:

1) that the plaintiff had business relations with a third party;
2) the defendant interfered with those business relations;
3) the defendant acted for a wrongful purpose or used dishonest, unfair, or improper means; and
4) the defendant's acts injured the relationship.[89]

### *G. Fair & Accurate Reports Under New York Civil Rights Law § 74*

The high-profile vitriolic dispute between actor Blake Lively and actor/producer/director Justin Baldoni over alleged misconduct on a film set morphed into dueling defamation lawsuits, with Baldoni also suing the New York Times and its reporters for a wide range of torts, including defamation and false light in *Lively v. Wayfarer*.[90] The claims against the newspaper and its reporter were dismissed, largely because the news story and video about the dispute were based on

---

86. *See id.* at *38–39.

87. *See* Grifols v. Yu, No. 24-cv-576 (LGL), 2025 U.S. Dist. LEXIS 101918, at *15–16, *32–33 (S.D.N.Y. 2025).

88. *Id.* at *62.

89. *Id.* at *64–68, *34–35 ("Plaintiff's allegations here are too conclusory, vague and lacking in a factual basis to support a claim for tortious interference with business. The alleged interference is not with a specific business relationship but Grifols' business relationships with, among others, its equity investors, sell-side analysts, debt investors, banks, auditors, lawyers, customers, and suppliers.").

90. *See* Lively v. Wayfarer Studios LLC*,* 786 F. Supp. 3d 695, 714 (S.D.N.Y. 2025).

facts, details, and information included in an underlying complaint Lively made before litigation with the California Civil Rights Department.[91]

Although the parties agreed that California law would be controlling in their dueling complaints, the New York Times argued that New York law should govern the defamation, false light, and civil extortion claims against them.[92] The court noted the importance of state law here because New York does not recognize false light invasion of privacy or civil extortion.[93]

As a choice of law matter for the newspaper, the court found that New York law should apply because "in multistate defamation cases, the traditional rule that the law of the plaintiff's domicile applies is only "presumptive" and may be overcome if "some other state has a more significant relationship," taking into account "where [the] plaintiff suffered the greatest injury; where the statements emanated and were broadcast; where the activities to which the allegedly defamatory statements refer took place; and the policy interests of the states whose law might apply."[94]

The court explained:

> The events underlying the allegedly defamatory statements took place in New York, where Lively, Sloane and Reynolds were based and sometimes met with Baldoni and the Wayfarer Parties, California, where the Wayfarer Parties were based, and the location of filming, which is not clearly specified but at least some of which occurred in New York. ("Lively expressed excitement over returning to shoot in the fall in New York."). The statements emanated from New York, where the Times is located.[95]

The court added:

> And decisively, "New York has strong policy interests in regulating the conduct of its citizens and its media." "[A]s the national center of the publishing industry, [New York] has a significant interest in assuring that the risks and liabilities flowing from publishing . . .

91. *See id.* at 715.
92. *See id.* at 735.
93. *See id.* at 734.
94. *Id.* at 736.
95. *Lively*, 786 F. Supp. 3d at 736–37.

> will be uniform," ensuring that publishers are able to "mold their conduct" to predictable legal norms.[96]

Substantively, though also technically procedural, the court's most instructive rationale rested in finding that the underlying report upon which the newspaper based the story was protected under Section 74's fair and accurate report privilege.[97] Just before reporters started digging into the dispute between Lively and Baldoni, Lively filed a complaint with the California Civil Rights Department ("CRD") alleging Baldoni engaged in extensive sexual harassment bordering on abuse during the filming of It Ends with Us.[98] Lively also informed the reporter about the report, which Baldoni also complained about, arguing it caused bias in the reporting.[99]

The court wrote, "The act of providing the CRD complaint to the Times is not sufficient to constitute defamation because the fair reporting privilege protects the complaint. The CRD complaint is a filing in a 'quasi-judicial proceeding.'"[100]

The court later concluded, "The statements in the Article and Video regarding the alleged sexual harassment are subject to the fair report privilege and were not plausibly made with actual malice."[101]

### *H. Anti-SLAPP*

New York's anti-SLAPP law played an important role in many cases in this *Survey*.[102] In short, the statute imports the actual malice standard into defamation lawsuits involving public issues and allows defendants not only to win a pre-trial dismissal but also to recover lawyers' fees.

In *Nelson v. Ardrey*, Facebook statements on a private page publishing a 17-year-old accusation of child molestation might not be a matter of public interest to dismiss a case under the anti-SLAPP statute, the appellate division held.[103]

---

96. *Id.* (quoting Kinsey v. N.Y. Times Co., 991 F.3d 171, 176–78 (2d Cir. 2021)).
97. *See id.* at 760.
98. See *id.* at 760–68.
99. *See id.* at 760.
100. *Lively*, 786 F. Supp. 3d at 760.
101. *Id.* at 774.
102. *See* N.Y. CIV. RIGHTS LAW § 70-a.
103. *See* Nelson v. Ardrey, 216 N.Y.S.3d 646, 647 (App. Div. 2024).

The court analyzed the statute, legislative history, and amendments, with regard to what would constitute a matter of public interest and the context of the forum.[104]

The court wrote: "Although not yet determined by a New York State appellate court, a federal case applying New York's anti-SLAPP statute has determined that social media platforms, such as Facebook, constitute a 'public forum.'"[105]

Facebook, the court held, is a public forum within the meaning of the anti-SLAPP law.[106]

The court equated Facebook with other internet platforms, including Twitter/X, LinkedIn, Slack, and GoFundMe, that constitute public forums, especially in modern times and under amendments to the statute.[107]

Though the forum might be a public forum, the underlying matter itself was not.[108] The court wrote:

> The statements here were private allegations of the plaintiff's alleged crimes. The record shows that the defendants made these statements on what was a limited personal Facebook post concerning the birthday of the plaintiff's daughter and not on a forum of broader scope. Under these circumstances, the content of the challenged statements was not within the sphere of public interest.[109]

An investigative reporter who had a defamation case dismissed and affirmed in federal court should be awarded attorneys' fees under the anti-SLAPP law, a state court held in *Buhl v. Kesner*.[110] The defamation lawsuit was dismissed under the anti-SLAPP law because the plaintiff could not establish falsity with actual malice relating to the story about its financial company.[111] The plaintiff's arguments that the

104. *See id.*; *see also* N.Y. CIV. RIGHTS LAW § 76-a(1).

105. *Nelson*, 216 N.Y.S.3d at 649.

106. *See id.* (discussing Coleman v. Grand, 523 F. Supp. 3d 244, 266 (E.D.N.Y. 2021)).

107. *See id.* The court also generously referenced other states, particularly California, with its interpretation of a similar statute. *See id.*

108. *See id.* at 650.

109. *See id.*

110. *See generally* Buhl v. Kesner, No. 152548/2022, 2024 N.Y. Misc. LEXIS 5891 (Sup. Ct. N.Y. Cnty. Sept. 3, 2024).

111. *See id.* at *2.

anti-SLAPP law was inapplicable or should not be applied retroactively were also dismissed.[112]

The court wrote:

> Because Buhl met her burden for dismissing Kesner's SLAPP suit under a more onerous standard, it would be illogical to rule she is not entitled to damages under Civil Rights Law § 70-a. Moreover, Civil Rights Law § 70-a does not use exclusive language but uses the word "including" when listing adjudications which allow for an award of fees.[113]

In another case, a defamation suit by a school board president and lawyer against a former local news reporter who wrote on Facebook about alleged mismanagement of school superintendent salaries was dismissed under the state's anti-SLAPP statute in *Castricone v. Vaught*.[114]

Facts underlying the Tuxedo Union Free School District's hiring of a new school superintendent at $1,000 a day while another superintendent was on paid leave were discussed at a school board meeting in September 2024.[115] The defendant wrote about the meeting on Facebook and further supported her findings through documents obtained under New York's Freedom of Information Law ("FOIL").[116]

Because the Facebook post was both accurate and a matter of public interest, the defendant's anti-SLAPP motion was granted, dismissing the defamation claim.[117]

The court wrote:

> Here, the Facebook post concerned the existence of records that directly contradicted Plaintiff's verbal assertions at the school board meeting that two superintendents were not being paid salaries simultaneously. Applying the concept of public interest broadly, as the Court must, there is little doubt that the anti-SLAPP statute applies to the instant matter.[118]

---

112. *See id.*
113. *Id.* at *4.
114. *See generally* Castricone v. Vaught, No. EF009958-2024, 2025 N.Y. Misc. LEXIS 7012 (Sup. Ct. Orange Cnty. May 8, 2025).
115. *See id.* at *2.
116. *See id.* at *2–3.
117. *See id.* at *7–8, *11–12 (applying N.Y. CIV. RIGHTS LAW § 76-a and N.Y. C.P.L.R. § 3025(b)).
118. *Id.* at *8.

Under the statute, the defendant was also deemed eligible for reasonable attorneys' fees because the defamation claim could not be proven with actual malice.[119] The court explained the nuanced and sometimes confusing definition of actual malice: "Importantly, despite its name, the actual malice standard does not measure malice in the sense of ill will or animosity, but instead the speaker's subjective doubts about the truth of the publication."[120]

## III. Invasion of Privacy

### *A. NY Civil Rights Law §§ 50–51*

A documentary film about the late political trailblazer Bella Abzug was at the center of a multifaceted, 21-count civil action in which a state court dismissed five counts, including claims under New York's privacy statute, Civil Rights Law Sections 50–51, in *Estate of Abzug v. Lieberman*.[121]

The court weighed in on several critical legal theories, including establishing that documentary films could be the subject of an anti-SLAPP motion, though that protection was not relevant or applicable to the matter at hand because there was no proof that the lawsuit was directed at silencing a speaker or their message.[122]

The bulk of the dispute emanated from a disagreement between the filmmaker and Abzug's heirs over the use of family photos, interview footage (both audio and video), and other family memorabilia in the film.[123] The crux of the litigation involved the family's dissatisfaction with the film and some of the agreement between the family and the filmmaker.[124]

Though the substantive media law issues of commercial appropriation were not established or provable because the film was a documentary, neither was the anti-SLAPP defense.[125] However, because the film was submitted to a 2022 film competition, the appropriation claims were time-barred under the one-year statute of limitations.[126]

119. *See Castricone*, 2025 N.Y. Misc. LEXIS 7012 at *12–13.
120. *Id.* at *11.
121. *See* Estate of Abzug v. Lieberman, No. 651816/2024, 2024 N.Y. Misc. LEXIS 13806, at *4–5 (Sup. Ct. N.Y. Cnty. Oct. 29, 2024).
122. *See id.*
123. *See id.* at *7–8.
124. *See id.*
125. *See id.* at *8–9.
126. *See Estate of Abzug*, 2024 N.Y. Misc. LEXIS 13806 at *10–11; *see also* N.Y. C.P.L.R. § 215(3).

Nevertheless, the court applied the four-prong analysis for commercial appropriation, which was unavailing here: 1) using the plaintiff's name, portrait, picture, or voice; 2) for an advertising or trade purpose; 3) without the plaintiff's consent; 4) in New York.[127]

The more nuanced aspects of the case concern the agreement between the family and the filmmaker regarding contract, fraud, and general business law.[128] The court did not dismiss some of the contract claims because plaintiffs sufficiently showed that there were some misrepresentations, particularly with the legal standing of the defendant's film company and other aspects of the development agreement, financial accounting, and family approvals.[129]

The court also let a claim for a permanent injunction go forward on the theory that there was merit because the "Abzug family property is being used without consent in the film."[130]

### *B. Use of Images*

A group of models whose images were continuously used for a bar's promotional materials survived a motion to dismiss, a trial court ruled in *Rockwell v. 27 Sports Bar & Cafe, Inc*.[131] The plaintiffs argued that the unauthorized use of their images created a false impression that they endorsed the bar or worked there.[132] Their claims were based on 50–51, as well as on a common law trademark claim and a claim for unfair competition.[133]

This is the latest in a series of unauthorized uses of images or likenesses in recent years, as the court cited.[134] The court noted:

> Whether a model's likeness functions as a source-identifying mark or conveys a false endorsement is a fact-intensive inquiry not susceptible to resolution as a matter of law. Plaintiffs allege that they are professional models whose images are widely disseminated in

---

127. *See id.* at *10 (citing Lohan v. Take-Two Interactive Software, Inc., 31 N.Y.3d 111 (2018)).

128. *See id.* at *13–16.

129. *See id.* at *17–18.

130. *Id.* at *19.

131. *See* Rockwell v. 27 Sports Bar & Cafe, Inc., Index No. 805609/2024E, 2025 N.Y. Misc. LEXIS 5462, at *1–2, *10 (Sup. Ct. Bronx Cnty. June 5, 2025).

132. *See id.* at *1–2.

133. *See id.*

134. *See* Toth v. 59 Murray Enters., Inc., No. 15 Civ. 8028 (NRB), 2019 U.S. Dist. LEXIS 1355 (S.D.N.Y. Jan. 3, 2019), *aff'd* in part, *vacated* in part sub nom. Electra v. 59 Murray Enters., 987 F.3d 233 (2d Cir. 2021); Souza v. Exotic Island Enters., 68 F.4th 99 (2d Cir. 2023).

> commercial media and that their likenesses carry recognized value in the modeling and advertising industries.
>
> They further allege that defendants' unauthorized use of their images in promotional material for a gentlemen's club diluted the distinctiveness of their identities and suggested a false affiliation or endorsement, thereby harming their professional reputations. Accepting these allegations as true, and affording plaintiffs the benefit of all favorable inferences as required under CPLR 3211(a)(7), the complaint sufficiently pleads false endorsement under the Lanham Act.
>
> Whether plaintiffs are, in fact, sufficiently recognizable to support these claims is a matter to be tested through discovery, not on a pre-answer motion to dismiss.[135]

## IV. Miscellaneous Torts

The tort of intentional infliction of emotional distress was at the center of the appellate division's decision in *Reeves v. Associated Newspapers, Ltd.*[136]

The court found the lawsuit to be a prime example of an anti-SLAPP case, in which the plaintiff could not satisfy the heightened burden. The case was dismissed under the statute, and reasonable attorneys' fees were awarded to the media defendants.[137]

Here, the plaintiff, Karl Reeves, the CEO of C.E.I.N.Y. Corp., Consolidated Elevator, was involved in a highly contentious divorce proceeding, which included accusations of abuse and involved five arrests.[138]

In July 2019, the defendant, *The Daily Mail Online*, covered the controversy with a story under the headline: "'Seriously, I'll kill both of them': NY socialite and actress is locked in vicious custody battle with 'racist, ketamine-snorting millionaire' CEO husband after he accused her of Pornhub fame and threatened to kill her parent[s]."[139]

The plaintiff filed an extensive suit alleging defamation, intentional and negligent infliction of emotional distress, tortious

135. *Rockwell*, 2025 N.Y. Misc. LEXIS 5462 at *8–9.

136. *See* Reeves v. Associated Newspapers, Ltd., 218 N.Y.S.3d 19, 23 (App. Div. 2024); *see also 2022–23 Survey*, *supra* note 38, at 859–60.

137. *See Reeves*, 218 N.Y.S.3d at 31.

138. *See id.* at 22.

139. *Id.* at 22–23.

interference with contract, and prima facie tort.[140] In its pre-answer motion to dismiss, the defendant argued that the story was based on public records under the fair and accurate privilege[141] and that the suit was intended to silence the news outlet under the anti-SLAPP law.[142]

The court tersely reiterated that the defendant's conduct was not "extreme and outrageous," prima facie elements of the intentional or negligent infliction torts.[143] The court held that the claims were also duplicative and were all properly dismissed.[144]

## V. NEWSGATHERING

### *A. Subpoenas*

A subpoena seeking documents and testimony from an investigative reporter at the center of a defamation suit was quashed by a federal court in *Dobrovolskaya v. Monarch Air*.[145] Though the underlying defamation suit had been dismissed in a federal court in Florida, the plaintiffs sought information, including confidential information, recordings, and communications, relating to stories the reporter wrote about an airline.[146] The reporter interviewed at least two former employees, with their identities kept anonymous.[147]

Because the reporter is based in New York, the court decided the state's Shield Law, with its absolute privilege for confidential information, should apply.[148] The court explained:

> [N]ew York law applies. Here, the matters sought to be discovered stem from conduct based in New York. Dobrovolskaya is a New York domiciliary, carried out her newsgathering, research, writing, and editing activities in New York, and New York has expressed a strong

140. *See id.* at 23.

141. *See id.*; *see also* N.Y. CIV. RIGHTS LAW § 74.

142. *See Reeves*, 218 N.Y.S.3d at 23; *see also* N.Y. CIV. RIGHTS LAW § 70-a.

143. *See id.* at 15–16 (citing Seymour v. Hovnanian, 180 N.Y.S.3d 33, 43–44 (App. Div. 2022)).

144. *See id.* at 15 ("The motion court correctly determined that the alleged defamatory statements published by defendants in an online news article reporting on the contentious divorce and child custody battle between Karl and Michelle were privileged under Civil Rights Law §74. Additionally, some statements … were substantially true based on text messages and audio and video recordings.").

145. *See* Dobrovolskaya v. Monarch Air, No. 1:25-mc-00032 (JLR), 2025 U.S. Dist. LEXIS 43194, at *1 (S.D.N.Y. Mar. 7, 2025).

146. *See id.* at *3.

147. *See id.* at *8.

148. *See id.* at *5–7; *see also* N.Y. CIV. RIGHTS LAW § 79-h, p (2025).

> interest in protecting the activities of its domiciliary journalists through application of its privilege law.[149]

The court was explicit in its application of the Shield Law, noting that in addition to the absolute privilege reporters have when parties seek to uncover confidential information in judicial proceedings, "[t]he New York Shield Law provides journalists with a qualified privilege as to news that is 'both unpublished and not obtained under a promise of confidentiality.'"[150]

The plaintiffs argued that the shield law should not apply to the potentially defamatory material, but the court also dismissed this claim because they could not establish that the three-pronged analysis to overcome the shield law was met.[151] The law requires a clear and convincing showing that 1) the information sought is "highly material and relevant", 2) "critical or necessary to the maintenance of a party's claim", and 3) not obtainable through alternative means.[152]

### *B. FOIL/50-a*

The Court of Appeals made a final determination on the extent to which the repeal of New York Civil Rights Law Section 50-a would apply to public records requests involving police disciplinary records.[153] New York's Freedom of Information Law, the Court of Appeals reiterated, was enacted "[t]o promote open government and public accountability, FOIL imposes a broad duty on government agencies to make their records available to the public."[154]

The high court ruled in two cases challenging lower court decisions on the repeal, one involving a newspaper that made an extensive

---

149. *Dobrovolskaya*, 2025 U.S. Dist. LEXIS 43194 at *7.

150. *Id.* at *14 (quoting Baker v. Goldman Sachs, 669 F.3d 105, 107 (2d Cir. 2012)).

151. *See id.* at *15–16.

152. *Id.* at *14–15.

153. The former law stated: "All personnel records used to evaluate performance toward continued employment or promotion [of certain law enforcement officers] . . . shall be considered confidential and not subject to inspection or review without the express written consent of [the affected law enforcement officer] . . . except as may be mandated by lawful court order." N.Y. CIV. RIGHTS LAW § 50-a(1) (repealed 2020).

154. N.Y. Civ. Liberties Union v. Rochester, 264 N.E.3d 1260, 1262 (N.Y. 2025) (quoting Abdur-Rashid v. N.Y.C. Police Dep't, 100 N.E.3d 799, 803 (N.Y. 2018)).

public records request to the New York City Police Department in *NYP Holdings v. N.Y.C. Police Dep't*.[155]

Here, the New York Post made 144 FOIL requests for disciplinary records of several police officers.[156] The request led to an Article 78 suit in which the newspaper asked the court to order the release of the records.[157]

Because the request sought records predating the 2020 repeal, the police department argued that the repeal was not intended to apply retroactively.[158] The police department also argued that the request was too voluminous and created a heavy burden for its public information and records management personnel.[159] Both the trial court and appellate division ruled in favor of the newspaper.[160]

After reiterating the importance of the public records law and its role in providing the public, and the media, with access to public records and a window into the workings of government,[161] the court analyzed the standards for retroactively applying a statute: 1) whether application is expressly required or required by necessity and 2) whether there is a "specific pronouncement" or urgency related to the law itself.[162]

The court held:

> [W]e conclude that the Legislature intended for the statutory repeal to have retroactive effect. For starters, there is no indication that the repeal was intended to affect the usual manner in which FOIL operates. FOIL requires agencies to "make available for public inspection and copying all records" . . . and it defines "records" with reference to whether an agency possesses information, but without reference to the date the information was created.[163]

---

155. *See generally* NYP Holdings, Inc. v. N.Y.C. Police Dep't, 263 N.E.3d 871 (N.Y. 2025).

156. *See id.* at 873.

157. *See id.*

158. *See id.*

159. *See id.*

160. *See NYP Holdings*, 263 N.E.3d at 873–74 (the Police Department dropped its appeal, but the PBA continued with the retroactivity argument through to the high court).

161. *See id.* at 873.

162. *Id.* at 874–75 (quoting Gleason v. Michael Vee, 749 N.E.2d 724, 726 (N.Y. 2001) (noting similar decisions by the Second and Fourth Departments)).

163. *Id*. at 875.

The other 50-a case, *New York Civil Liberties Union v. Rochester*, though not with media litigants, is still important to interpreting and applying the repeal.[164]

The New York Civil Liberties Union challenged the underlying law's blanket denial of police disciplinary records.[165] The lower courts rejected the municipality's denial of the NYCLU's 2020 police disciplinary records request.[166] The city argued that the requested records would constitute an unwarranted invasion of privacy.[167]

The court held:

> We agree with respondents that *FOIL*, as amended in conjunction with the repeal of Civil Rights Law § 50-a, does not deny law enforcement officers the benefit of this exemption. However, the Appellate Division correctly concluded—consistent with uniform appellate precedent—that there is no categorical or blanket personal privacy exemption for records relating to complaints against law enforcement officers that are not deemed substantiated.[168]

164. *See N.Y. Civ. Liberties*, 264 N.E.3d at 1260.
165. *See id.* at 1262.
166. *See id.*
167. *See id.*
168. *Id.*